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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44127
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2009-19561
)	
TARA JEAN HURLEY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Hurley failed to establish that the district court abused its discretion by relinquishing jurisdiction?

Hurley Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Hurley pled guilty to possession of a controlled substance, methamphetamine, and the district court imposed a unified sentence of five years, with two years fixed, but suspended the sentence and placed Hurley on probation for five years. (R., pp.72-78.) In August of 2015, Hurley violated her probation by committing a new crime (excessive

DUI), and by consuming and/or possessing an alcoholic beverage. (R., pp.105-07, 143.) The court revoked Hurley's probation, executed her sentence, and retained jurisdiction. (R., pp.146-49) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.150-52.) Hurley filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.154-56.)

Hurley asserts that the district court abused its discretion by relinquishing jurisdiction in light of successes during her period of retained jurisdiction, her recognition of a problem, and her desire to make changes in her life. (Appellant's brief, pp.4-6.) Hurley has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

The report from the Idaho Department of Correction (IDOC) shows that Hurley did not do well on her rider due to "continual rule violations and not progressing in core

programming.” (PSI, p.242.¹) Hurley received 28 formal disciplinary sanctions that included failure to follow directions, disobedience to orders, asleep during program hours, unauthorized transfer of property, failure to do tier chore, breaking confidentiality, manipulating staff, and unauthorized area. (PSI, pp.244-46.) Hurley was given many verbal warnings which progressed to discipline and, ultimately, six DOR’s. (PSI, p.246.) Other comments from IDOC staff include that Hurley had no regard for rules, was a disruption, blamed others for her violations, exhibited hostile and entitled behavior, did not complete assigned programs, and appeared to not be sincere in regard to her willingness to change her behaviors. (PSI, pp.246-50.) The state submits that, due to Hurley’s abysmal performance and failure to rehabilitate, she has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests this Court to affirm the district court’s order relinquishing jurisdiction.

DATED this 7th day of October, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

¹ PSI refers to the all the documents included in the electronic copy of the PSI, including the original PSI, Addendums to the PSI, Substance Abuse Evaluation, and letters in support of Ms. Hurley. The page numbers cited refer to the electronic page numbers of the document.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of October, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General